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**ORIGINAL
FILE COPY**

April 8, 1996

VIA FACSIMILE

Blanca S. Bayo, Director
 Florida Public Service Commission
 Division of Records & Recording
 2540 Shumard Oak Blvd. - Room 110
 Tallahassee, FL 32399

Re: Docket No. 950307-EU
 Petition of Jacksonville Electric Authority to Resolve a
 Territorial Dispute with Florida Power & Light Company
 in St. Johns County

Dear Ms. Bayo:

Being telecopied herewith are the following:

- VOX _____
 - DEA _____
 - APP _____
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 - LIN / _____
 - OPC _____
 - RCH _____
 - SEC / _____
 - WAS _____
 - OTH _____
1. Florida Steel Corporation's Motion to Strike Florida Power and Light Company's Motion to Dismiss Florida Steel Corporation's Petition and Protest on Proposed Agency Action to Approve a Territorial Agreement; and
 2. Florida Steel Corporation's Motion to Strike Jacksonville Electrical Authority's Motion to Dismiss Florida Steel Corporation's Petition and Protest on Proposed Agency Action to Approve a Territorial Agreement.

Originals and fifteen copies of the above will be provided to the PSC tomorrow.

With kindest personal regards, I am

Very truly yours,

SALEM, SAXON & NIELSEN, P.A.

Marian B. Rush
 Marian B. Rush

MBR/cb3
 Enclosures
 cc: Service List
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FPL
 DOCUMENT NUMBER-DATE
 04122 APR-96
 FPSC-RECORDS/REPORTING

JE A
 DOCUMENT NUMBER-DATE
 04123 APR-96
 FPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition of Jacksonville Electric)
Authority to Resolve a Territorial Dispute)
with Florida Power & Light Company in)
St. Johns County)

Docket No. 950307-EU
Served: April 8, 1996
Filed: April 9, 1996

ORIGINAL
FILE COPY

**FLORIDA STEEL CORPORATION'S MOTION TO STRIKE
FLORIDA POWER AND LIGHT COMPANY'S MOTION TO DISMISS
FLORIDA STEEL CORPORATION'S PETITION AND PROTEST
ON PROPOSED AGENCY ACTION TO APPROVE A TERRITORIAL AGREEMENT**

Florida Steel Corporation ("FSC"), pursuant to Rule 25-22.037(2)(b), files this Motion to Strike Florida Power & Light Company's ("FPL") Motion to Dismiss Florida Steel Corporation's Petition and Protest on Proposed Agency Action to Approve a Territorial Agreement, and in support thereof states:

1. Florida Steel Corporation filed its Petition and Protest on Proposed Agency Action to Approve a Territorial Agreement ("Protest") in a timely manner on March 6, 1996, with the Public Service Commission.

2. According to the Case Assignment and Scheduling Record, the response to any protest, if any, was due on or before March 20, 1996. Pursuant to Rule 25-22.037, any response after the service of a written motion must be made within seven (7) days. Whenever a party is required or permitted to do an act within a prescribed time after service of the document, and the document is served by mail, five (5) days are added to the prescribed time for serving a document by mail pursuant to Rule 22.028(4). Under Florida Rules of Civil Procedure, service is complete upon placing a document in the mail. Accordingly, under the deadlines designated by the Case Assignment and Scheduling Record or under Chapter 25 of the Florida Administrative Code, any response to the Protest must have been served (by placing it in the mail) no later than March 18, 1996.

3. FPL's Motion to Dismiss, which is in response to FSC's Protest, was not served (placed in the mail) until March 26, 1996, eight (8) days past the deadline set by the Florida Public Service Commission ("PSC") and the Rules mandated in the Florida Administrative Code, and it is, thus, untimely.

4. FPL alleges that FSC has not alleged any additional applicable facts in its Protest other than what was set forth in its Motion to Intervene and that the prehearing officer's denial of the Petition to Intervene was correct. First, FSC maintains that the prehearing officer's decision incorrectly denied its Motion to Intervene, and FSC has filed its Notice of Appeal disputing that

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04122 APR-96
FPSC-RECORDS/REPORTING

decision. Secondly, FSC's Protest sets forth a more detailed basis of its substantial interest in the outcome of this proceeding than was described in its Motion to Intervene (a copy of the Protest is attached hereto for convenience). The Protest describes detailed additional factual matters which should be addressed by the Commission in a full hearing on how the Territorial Agreement impacts on all customers of both FPL and JEA in order to insure that the Agreement "works no detriment to the public interest" as mandated in Utilities Commission of New Smyrna Beach v. Florida Pub. Serv. Comm'n., 469 So. 2d 731, 732 (Fla. 1985)(see Protest, pages 5-8). Thus, FSC's Protest establishes that FSC will suffer an injury which is sufficient to entitle it to a hearing. This injury is of the type and nature which the proceeding is designed to protect and which necessitates a full hearing regarding the Territorial Agreement in this docket.

WHEREFORE, FSC respectfully requests this Commission enter an order striking FPL's Motion to Dismiss and Supporting Memorandum of Law directed at FSC's Protest and order a full hearing on the merits regarding the Territorial Agreement in this docket.

Respectfully submitted,

FLORIDA STEEL CORPORATION

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Dated: April 8, 1996
F:\CL\FLSTEEL\PLD-G-4.JEA\STRIKE

CERTIFICATE OF SERVICE

**CASE NO. 87,550
(PSC DOCKET NO. 950307-EU)**

I HEREBY CERTIFY that a true and correct copy of the foregoing Florida Steel Corporation's Motion to Strike Florida Power and Light Company's Motion to Dismiss Florida Steel Corporation's Petition and Protest on Proposed Agency Action to Approve a Territorial Agreement has been furnished via facsimile and U.S. Mail on the 9th day of April 1996, to the following:

Beth Culpepper, Esq.
Florida Public Service Commission
Gerald L. Gunter Building
2540 Shumard Oak Blvd.
Room 301
Tallahassee, FL 32399-0850

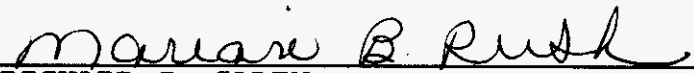
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RICHARD J. SALEM
MARIAN B. RUSH

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition of Jacksonville Electric)
Authority to Resolve a Territorial Dispute) Docket No. 950307-EU
with Florida Power & Light Company in) Filed: March 6, 1996
St. Johns County)

FLORIDA STEEL CORPORATION'S
PETITION AND PROTEST ON PROPOSED AGENCY ACTION
TO APPROVE A TERRITORIAL AGREEMENT

Pursuant to Florida Administrative Code Rule 25-22.036 (7)(a) and (f) and the Notice of Proposed Agency Action issued February 14, 1996 (the "PAA"), Florida Steel Corporation ("Florida Steel") protests the PAA approving a proposed territorial agreement between Jacksonville Electric Authority ("JEA") and Florida Power & Light Company ("FPL"). Florida Steel requests that the Commission commence a formal proceeding to examine the disputed substantive issues presented in this docket. Florida Steel asserts that it has substantial interests that are affected¹ by the proposed action, and that there are significant factual questions that need to be addressed before the Commission takes final action in this matter.

In support of this protest, Florida Steel states as follows:

1. The name and address of petitioner is as follows:

Florida Steel Corporation
5100 West Lemon Street, suite 312
Tampa, Florida 33609

Documents relating to this proceeding may be served on Florida Steel by serving them on the following individuals:

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¹ By Order issued February 5, 1996, the Commission denied Florida Steel's Motion to Intervene in this docket. In a separate filing today, Florida Steel appeals that determination.

BACKGROUND

2. Florida Steel operates a steel recycling and manufacturing plant at Highway 217, Yellow Water Road, in Jacksonville, Florida. The Jacksonville plant is a steel mill that uses an electric arc furnace to melt scrap steel and cast the resulting molten steel into long strands (billets) in a continuous casting process. The plant produces rebar and rods that are used in a variety of highway, building construction and other construction applications. Rebar and rods are sold by Florida Steel in highly competitive commodity markets. The cost of energy is a significant factor in the operating economics of the steel mill.

3. In February, 1996, Florida Steel announced it will close the Jacksonville facility for at least one week in March to adjust for excess inventory caused in part by a resurgence of cheap imported steel rod products. The decision to curtail production at Jacksonville and the length of that shut down reflects the fact that this facility has the highest production costs and the highest electricity rates of Florida Steel's steel making facilities. As the marginal source of production, Jacksonville generally will be the first facility curtailed and the last to return to full production whenever market conditions require such adjustments.

4. In addition to the Jacksonville mill, Florida Steel operates steel mills in Tennessee and North Carolina. In July 1995, Florida Steel was forced to close a steel mill in Tampa because the mill could no longer be operated economically compared to other steel manufacturing resources. The high cost of energy to the Tampa mill was a major contributing factor in the closure of that plant.

5. JEA is responsible for providing electric service to all consumers in Duval County, but Florida Steel has never been a customer of JEA. In 1963, FPL and JEA agreed that the boundary line between their respective service territories would be the mid-point between the extreme ends of their ten-existing distribution networks in Duval County. In 1968, subsequent to that agreement, the City of Jacksonville annexed substantial portions of Duval County. Following consolidation, FPL continued to serve its pocket of Duval County, which includes the site Florida Steel selected for the Jacksonville mill in 1974.

6. In 1979, FPL and JEA reached a territorial agreement settling their boundary lines for the next 15 years. In Order No. 9363, the Commission approved those boundary lines and, through that Order, directed the utilities to abide by the territorial arrangement.

7. The JEA petition that initiated this docket asserted that FPL extended distribution facilities to and served hundreds of electric customers in St. Johns County in areas expressly reserved to JEA by Order No. 9363. JEA maintained that it had accepted FPL's presence on a temporary basis, but eventually expected to provide service to those customers itself once it could economically do so. That time had arrived, JEA asserted, due to load growth in the area. Thus, JEA wanted its customers back, and it wanted FPL to relocate its facilities (at JEA's expense) to FPL's side of the territorial boundary.

8. FPL responded that JEA had asked it to provide service to the customers in question and that JEA should be estopped from claiming that the customers still belonged to JEA. In FPL's view, JEA had abandoned that segment of its service area, and FPL never considered its extension of distribution facilities in the area to be temporary. FPL asked the Commission to redraw the boundary in St. Johns County to correspond with its "modified" service territory, *i.e.*, to legitimize its unauthorized movement into JEA's service area.

9. FPL and JEA filed a "comprehensive" settlement in October 1995 which revised the actual operating boundaries between the utilities in St. Johns County to correspond with the lines previously approved by the Commission. FPL relinquished the extra-territorial areas it served and transferred 447 customer accounts to JEA. JEA compensated FPL for various facility related costs, and agreed to provide customer revenue compensation to FPL.

10. In addition, at some unspecified point in their negotiations, JEA and FPL agreed to resolve issues related to their territorial boundaries in Duval, Clay, and Nassau Counties. FPL also had unilaterally crossed the service lines in Duval County, and the settlement requires 57 current FPL customers in Duval County to be transferred to JEA. No notice was given that this docket would address the territorial boundaries in Duval County or other areas.

11. At the separate requests of Florida Steel and the Mayor of Jacksonville, the Commission deferred consideration of the proposed "comprehensive settlement" on two occasions, and the Commission staff held a meeting with the parties on January 10, 1996 to discuss any issues regarding the proposed territorial agreement. At its February 6, 1996 conference agenda, the Commission considered comments by the Commission Staff, FPL, JEA, Florida Steel, the Jacksonville Chamber of Commerce, and First Coast Manufacturing and voted to approve the territorial agreement. The Commission issued the PAA approving the proposed agreement on February 14, 1996. On February 17, 1996, Attorneys for Florida Steel received a copy of the Proposed Agency Action.

As discussed below, Florida Steel has a significant interest in the outcome of this proceeding, there are substantial factual questions to be resolved, and the proposed settlement is likely to have a significant effect on the economic well-being of Duval County.

DISCUSSION

A. Florida Steel Has A Substantial Interest In The Outcome Of This Proceeding

Florida Steel's interest in the proposed territorial agreement previously has been described at length in its Motion to Intervene, and the discussions before the Commission at its February 6, 1996 conference agenda. Briefly put, Florida Steel's Florida steel making operations are at risk. Florida Steel is attempting to improve operating efficiency at the Jacksonville mill to allow it to become more economically competitive. Because the cost of electric energy is a significant operating cost, Florida Steel has initiated varied efforts to obtain a competitive energy rate.²

FPL and JEA are each capable of offering competitive power rates to Florida Steel. JEA is obliged by its enabling legislation to serve all electric users within the Jacksonville City limits, including the segment of Duval County where the Florida Steel mill is situated. Pursuant to the City Charter and Section 718 of the Jacksonville Municipal Code, JEA can delegate this responsibility to another utility if it is not economic or practical for JEA to provide the service. FPL currently provides

² The electricity rates Florida Steel pays to FPL at Jacksonville are more than 50% higher than the average rate the company's Charlotte facility pays to Duke Power for electric arc furnace operations.

electricity to Florida Steel and other customers in western Duval County pursuant to the territorial agreement first reached in 1963.

In several instances, JEA has relied upon other sources to serve areas within its municipal limits, subsequently determined that it was economic and practical to extend service to a specific area, and acted to supplant the existing provider.³ JEA brought the instant petition because it had become economic and practical for JEA to extend service to southern St. Johns County. When the parties included Duval County in their discussions, JEA similarly should have assessed, in accordance with its charge under Section 718.103 of the Jacksonville Municipal Code, whether it was practical and economic for JEA to serve additional portions of Duval County. No showing on these questions have been made or offered by JEA in this docket.

Florida Steel believes that a reasoned analysis would conclude that JEA can economically extend service to additional areas in Duval County that includes Florida Steel's facility near Baldwin. Because the economic viability of its Jacksonville operation is tied closely to the cost of energy, and significant disparities exist between rates charged by FPL and rates proposed by JEA that would be applicable to Florida Steel, Florida Steel has a substantial stake in the outcome of this proceeding.

B. Several Factual Matters Must Be Addressed Before The Commission Takes Final Action In This Docket

1. The Commission Must Evaluate the Overall Impact of the Proposed Settlement.

The Commission is responsible for ensuring that the proposed territorial agreement "works no detriment to the public interest." *Utilities Commission of New Smyrna Beach v. Florida Pub. Serv. Comm'n.*, 469 So. 2d 731, 732 (Fla. 1985). In conducting its review, it is not sufficient to consider the views only of the signatory utilities. Neither is it sufficient to consider the reactions only of customers whose accounts would be transferred as a result of the agreement. The Commission must look at the impact on all customers of both utilities. *New Smyrna Beach*, 469 So. 2d at 732.

³ See, e.g., *Petition to Resolve Territorial Dispute between Okefenoke Rural Electric Membership Cooperative and Jacksonville Electric Authority*, Docket No. 911141-EU, Order No. PSC-92-1213-FOF-EU.

Traditional analysis in these cases has sought to ensure reliable delivery of service while avoiding uneconomic duplication of facilities, and the PAA cites to these basic considerations (PAA at p. 5). The circumstances in this case, however, raise additional concerns. As to the areas served outside the Jacksonville municipal limits, Commission needs to examine the reasonableness of the consideration given for the assets and customers transferred between the utilities.

As to the proposed boundaries within municipal limits, the Commission needs to balance JEA's prerogatives as a municipal utility and its traditional analysis pursuant to the Grid Bill. It also needs to consider that a customer within the city limits can compel service by the city authority. *Storey v. Mayo*, 217 So. 2d 304, 308 (Fla. 1968). Thus, JEA's responsibility under the City Charter to provide service to customers where it is economic and practical for it to do so, and the threat to Duval County's economic well-being posed by FPL's current rate levels are issues that need to be addressed.

Storey v. Mayo involved a territorial dispute between FPL and the municipal electric agency operated by the Town of Hempstead concerning non-municipal areas served by Hempstead. In its decision, the Court acknowledged that "Under Florida Law, municipally-owned electric utilities enjoy the privileges of legally protected monopolies within municipal limits." 217 So.2d at 307 (emphasis supplied). The Court further recognized that a customer within the city limits can compel service by the city. 217 So.2d at 308. Thus, Florida Steel is entitled to seek service from JEA, and JEA can assign that function to another utility only if it is not practical or economic for JEA to provide the service itself.

Because FPL and JEA have included the territorial line drawn through the City of Jacksonville in their settlement, Florida Steel has a significant and direct interest in seeing that JEA's actions with respect to territorial boundaries satisfy the requirements of the City Charter and ordinances. This interest is enhanced by the highly competitive commodity markets in which Florida Steel operates and the array of pricing options that are being offered by utilities to Florida Steel's competitors.

Given the price disparities between rates charged by FPL and JEA, Florida Steel's dual status as a customer of FPL and a resident energy consumer within Jacksonville city limits, the substantial

effect that electricity rates have on the economic viability Florida Steel's Jacksonville mill, and the importance of Florida Steel's operations to the local economy, the Commission's final determination in this docket should consider:

- Is it economic and practical for JEA to serve the western Duval County area where the Florida Steel facility is located?
 - Would a shift of the territorial boundary to transfer this area to JEA facilitate a commitment by Florida Steel to continue or even expand operations in Jacksonville?
 - What, if any, effect would such a transfer have on other FPL ratepayers?⁴
2. **The Determination Of The Territorial Boundary Line Will Have A Significant Impact On Other Ratepayers And The Economy Of Duval County**

The Commission has noted that the utility preferences of individual customers are not dispositive considerations in its review of territorial agreements (PAA at p. 3). Larger policies to be considered by the Commission, however, should include the effect the territorial agreement may have on the local economy. In this case, it is not disputed that Florida Steel employs over 260 people, generally in well paid,⁵ highly skilled jobs. Similarly, there is no dispute that Florida Steel is a substantial supporting presence in the economy of Duval County.

Also, there is no dispute that Florida Steel's electric arc furnace and rolling mill operations make it a very large consumer of electricity (historically using more than 225,000,000 kwh annually). The cost of electricity is a key factor in the facility's economic competitiveness.

It is not necessary in the context of this docket to determine what level of electric rates are needed for the Jacksonville mill to remain or to become competitive. However, the potential

⁴ FPSC staff suggested at the Commission's February 6, 1996 agenda that the transfer may entail negligible costs for FPL ratepayers or that there may be a net benefit if the transfer would enhance FPL's available transmission transfer capability for economy energy transactions with Georgia.

⁵ The average compensation package at Florida Steel's Jacksonville facility exceeds \$50,000.

for the decision in this docket to facilitate or impede economic development efforts with respect to Florida Steel should be considered.

3. Revenue Compensation Payments By JEA To FPL Are Not Justified

Under the proposed agreement, JEA will pay FPL \$1,730,00 in compensation for the transfer of all customers and associated facilities, including customer revenue compensation; net book value of facilities; relocation costs; feeder tie construction costs, and cost recovery for all area improvements. Of this amount, roughly \$1,300,000 relates to customer revenue compensation to FPL. On the face of the documents submitted in this docket, these payments cannot be justified. The prior territorial agreements do not require or provide for future revenue compensation where extra-territorial service has been provided.

JEA's petition alleges that FPL was serving nearly 450 customers in JEA's service area. FPL's answer concedes that its service to the disputed customers crossed the territorial line established by the Commission in Order 9363. Further, FPL asserted its abandonment theory rather than attempting to justify its presence based on the cross-territorial provision in the existing territorial agreement.⁶ The proposed settlement re-establishes the territorial lines previously set and approved by the Commission, effectively confirming JEA's long established right to serve the disputed segment of St. John's County. Under these circumstances, FPL had no reasonable expectation of receiving continued revenue streams from its extra-territorial service in the disputed areas in St. Johns County. It was always on notice that JEA could exercise its right to serve the area pursuant to the territorial agreement. If JEA were simply enforcing its rights under the 1979 territorial agreement, there would be no reason for it to agree to pay FPL for future customer revenue streams that FPL had no legitimate or realistic expectation of receiving. The Commission should closely assess the basis for customer revenue payments in this case.

⁶ Section 3.4 of 1979 Agreement.

CONCLUSION

WHEREFORE, Florida Steel requests that the Commission initiate formal hearings to address the factual questions raised by Florida Steel prior to issuing a final order in this docket.

Respectfully submitted,

FLORIDA STEEL CORPORATION

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Dated: March 5, 1996

CERTIFICATE OF SERVICE
DOCKET NO. 950307-EU

I HEREBY CERTIFY that a true and correct copy of the foregoing Florida Steel Corporation's Petition and Protest on Proposed Agency Action to Approve a Territorial Agreement has been furnished via Federal Express on the 5th day of March 1996, to the following:

Beth Culpepper, Esq. ..
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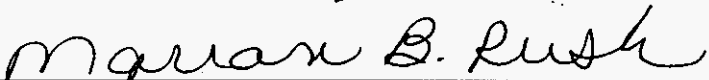
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